## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA ASHEVILLE DIVISION 1:21-cv-00318-MR-WCM

| JOHNNIE R. SIMMONS, JR. | )  |           |
|-------------------------|----|-----------|
| Plaintiff,              | )  | ORDER     |
| v.                      | į́ | 01,2 21,0 |
| WALMART, INC.,          | )  |           |
| Defendant.              | )  |           |

This matter is before the Court on a Motion to Dismiss filed by Doug McMillion, Walmart, Inc., and Walmart Store No. 1034 (the "Motion to Dismiss," Doc. 14).

The Motion to Dismiss, which seeks the dismissal of Plaintiff's Complaint pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, was filed on January 13, 2022. Doc. 14. Fourteen (14) days later, on January 27, 2022, Plaintiff filed an Amended Complaint. Doc. 20.1

"The general rule ... is that an amended pleading supersedes the original pleading, rendering the original pleading of no effect." Young v. City of Mount Ranier, 238 F.3d 567, 573 (4th Cir. 2001); see also Fawzy v. Wauquiez Boats SNC, 873 F.3d 451, 455 (4th Cir. 2017) ("Because a properly filed amended

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<sup>&</sup>lt;sup>1</sup> Plaintiff names only Walmart Inc. as a Defendant in the Amended Complaint.

complaint supersedes the original one and becomes the operative complaint in the case, it renders the original complaint 'of no effect").

"A party may amend its pleading once as a matter of course within ... 21 days after service of a motion under Rule 12(b)...." Fed. R. Civ. Pro. 15(a)(1)(B). Because Plaintiff has amended his complaint within the time period provided by Rule 15(a)(1)(B), the Motion to Dismiss is now moot. See Colin v. Marconi Commerce Systems Employees' Retirement Plan, 335 F.Supp.2d 590, 614 (M.D.N.C. 2004) ("Earlier motions made by Defendants were filed prior to and have been rendered moot by Plaintiffs' filing of the Second Amended Complaint"); Ledford v. Eastern Band of Cherokee Indians, No. 1:20-CV-005-MR-DCK, 2020 WL 1042235 at 1 (W.D.N.C. March 3, 2020) ("It is well settled that a timely-filed amended pleading supersedes the original pleading, and that motions directed at superseded pleadings may be denied as moot").

IT IS THEREFORE ORDERED that the Motion to Dismiss (Doc. 14) is **DENIED AS MOOT**. This denial is without prejudice to Defendant's right to challenge the Amended Complaint, if appropriate.

Signed: January 31, 2022

W. Carleton Metcalf

United States Magistrate Judge